

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

**CMFG LIFE INSURANCE COMPANY,
CUMIS INSURANCE SOCIETY, Inc., AND
MEMBERS LIFE INSURANCE COMPANY,**

Plaintiffs,

-vs-

Case No. 13-C-577

MORGAN STANLEY & Co., LLC,

Defendant.

DECISION AND ORDER

This is an action seeking to rescind the purchase of residential mortgage-backed securities (RMBS). The Court entered a scheduling order on January 14, 2016. Expert and fact discovery is currently ongoing. The plaintiffs, collectively CUNA Mutual, move for an order instituting a loan file re-underwriting protocol (LFRP).

Reunderwriting involves examining the collection of documents used to originate each mortgage loan to determine whether the loan was originated in accordance with applicable underwriting guidelines and was accurately represented in the Offering Documents. Courts have instituted LFRPs in other RMBS litigation, some of which involve Smith Barney as a defendant. *See* ECF No. 99-1, Exhibit A (Joint order in a series of cases,

generally the *NCUA* Litigation).

CUNA Mutual's primary and most persuasive argument is that a LFRP would minimize the burdens of discovery by requiring the parties to stipulate to the appropriate loan file and guideline for each mortgage before undertaking the re-underwriting process. Morgan Stanley counters that the LFRPs in the *NCUA* Litigation proved to be burdensome and wasteful in practice because the stipulation process was a logistical challenge costing millions of dollars. The relevant question, however, is whether using a LFRP is more or less costly than the alternative. Importantly, both parties proceed on the assumption that their experts will engage in re-underwriting. If the parties' experts are re-underwriting different loans and guidelines, then the whole process is rendered useless and a waste of time. The stipulation process, even if costly, appears to be a necessary evil.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. CUNA Mutual's motion to institute a Loan File Reunderwriting Protocol [ECF No. 99] is **GRANTED**; and
2. CUNA Mutual's motion for leave to file a reply brief [ECF No. 101] is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 28th day of June, 2016

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge